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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-223

CENTRAL HARDWARE COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD and RETAIL CLERKS UNION, LOCAL 725, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

MOTION FOR LEAVE TO ENGAGE IN ORAL ARGUMENT

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WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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The American Retail Federation (hereinafter "Federation") hereby moves this Court pursuant to Rule 44(7) of the rules of this Court for leave to engage in oral argument of the instant case.[1] In support whereof, the following is respectfully shown:

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[1] The Federation has filed a motion for leave to file a brief *amicus curiae* and brief *amicus curiae* herein.

1. The Federation represents approximately 800,000 retailers throughout the United States who employ close to six million employees. Each of these enterprises and employees will be vitally affected by the decision which the Court will render in this case. As a consequence of the substantial and necessarily far-reaching impact of such a decision, the Federation has in the past actively participated on behalf of its members and their employees in those other cases which have raised related questions concerning the resolution of the conflicting Constitutional guarantees involved here.[1] The extent and range of the Federation's previous and continuing concern in this area has produced an educated perspective which will be helpful to this Court and which differs from that which any other participant in this proceeding may bring to bear.

2. Inasmuch as the effect of this Court's decision will be to prescribe rules of Constitutional conduct applying to business configurations and situations entirely unlike those involved in this case, therefore further participation by the Federation is appropriate as the only representative here of the range and number of differing organizations and contacts to be governed by the results of this proceeding.

Similarly, as contrasted with the breadth of the unions' contentions,[2] the legal position urged by Petitioner is fairly narrow and a product of the facts of the case. Therefore, it is also appropriate that the Federation should be heard because of the wider scope of the legal contentions it urges as well as because of the greater

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[1] *Amalgamated Food Employees Union, Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968); *Taggart* v. *Weinacker's*, 397 U.S. 223 (1970); *Homart Development Company* v. *Diamond, et al.*, No. 1469; *Lloyd Corporation, Ltd.* v. *Tanner, et al.*, No. 71-492 as well as the instant case.

[2] See brief of Respondent Retail Clerks Union and brief *amicus curiae* of the American Federation of Labor and Congress of Organizations.

range of affected interests for which it speaks. Thus, it is the Federation, of all the participants in this case, which raises questions concerning the validity of the premises which underlie the authorities and the principles which are cited in support of the various positions urged on the Court and their appropriateness to a resolution of the issues presented. And it is the Federation which seeks to direct the Court's attention to some of the more difficult situations which, though unlike those of the instant case, will presumably be governed by the rule of this case. More specifically, the Court below held that unions' organizational activities may permissibly be conducted on an employer's private property, irrespective of the availability of reasonably equivalent alternative sites, when that private property is "quasi-public" or the "functional equivalent" of public property. However, whereas the property of a privately owned shopping center catering to and admitting all members of the public has been described as the functional equivalent of public property, would the same apply to the property of a wholesale operation which neither invites nor services the public at large? Where an office building provides a mall or lobby area for the use of its tenants and their guests, does such a mall become the equivalent of public property or a part of a "business block" such that strangers may assert unrelated First Amendment rights? If such property is not deemed converted to public property, may strangers nonetheless Constitutionally require the use of such a mall where their purpose is "generally consonant" with the property's use? Does the parking lot of a shopping center or public amusement center move in its character as a "business district" subject to competing First Amendment uses when the center charges an admission or parking fee?[3]

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[3] At least one court has concluded that it does lose its "public" character, and this court subsequently denied *certiorari*. *Ball* v. *California*, —— U.S. ——, 30 L.Ed.2d 189 (No. 71-209, October 26, 1971).

Do the premises of a privately owned and operated utility become subject to unrelated First Amendment uses by virtue of their similarity to an instrumentality of the state? Do such premises become less "public" if a charge is assessed for the use of the parking facilities surrounding the utility? Are state regulated and licensed businesses which cater to the public the "functional equivalent" of public property?

3. In addition to broadening the focus of inquiry in this case to the manifold situations and interests to be governed by its result, the Federation also urges upon the Court a resolution of the issues presented which encompasses all such situations and accommodates the parties' conflicting Constitutional claims. The resolution thus proposed differs from that suggested by any of the other participants to this proceeding and warrants the attention of the Court.

Respectfully submitted,

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